

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHAWN J. PATTERSON,

Plaintiff,

-against-

SHAWN PATTERSON, et al.,

Defendants.

ORDER OF SERVICE

20-CV-2552 (PMH)

PHILIP M. HALPERN, United States District Judge:

Plaintiff, appearing *pro se*, brings this action under 42 U.S.C. § 1983, alleging that Defendants violated his federal constitutional rights. By order dated April 6, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* ("IFP").

By letter filed May 27, 2021 Plaintiff advised the Court that he discovered the full and correct name of one of the defendants sued herein as "Gene *d/b/a Chief of Police of the Hudson Valley Humane Society Law Enforcement Dept.*" ("Gene") to be "Gene Heck" and advised the Court of his service address. (Doc. 48). On June 1, 2021, the Court issued an Order deeming the Complaint amended to identify defendant Gene Heck in lieu of Gene and directing defense counsel to advise the Court by letter whether it is representing defendant Gene Heck in this action and if so, whether counsel would accept service on his behalf. (Doc. 51). On June 1, 2021, defense counsel advised that it is not representing defendant Gene Heck in this action and accordingly could not so accept service. (Doc. 52).

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process

. . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summonses and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summonses and complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date the summonses are issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service on defendant Gene Heck through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for this defendant. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon this defendant.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is instructed to complete the USM-285 form with the address for Gene Heck and deliver to the U.S. Marshals Service all documents necessary to effect service.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge*

v. United States, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED:

Dated: White Plains, New York
June 2, 2021

A handwritten signature in black ink, appearing to read 'PHM', with a long, sweeping diagonal stroke extending upwards and to the right.

PHILIP M. HALPERN
United States District Judge

DEFENDANT AND SERVICE ADDRESS

1. Gene Heck
Hudson Valley SPCA
940 Little Britain Road
New Windsor, NY 12553